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CHARLES ELMORE CR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. ~~955~~ 48

PACIFIC STATES BOX AND BASKET COMPANY, A CALIFORNIA CORPORATION,

Appellant,

vs.

MAX GEHLHAR, AS DIRECTOR OF AGRICULTURE FOR THE STATE OF OREGON, AND CHAS. A. COLE, AS CHIEF OF THE DIVISION OF PLANT INDUSTRY OF THE DEPARTMENT OF AGRICULTURE FOR THE STATE OF OREGON,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

APPELLEES' STATEMENT OF MATTERS MAKING AGAINST THE JURISDICTION OF THE COURT ON APPEAL.

I. H. VAN WINKLE,
Attorney-General of Oregon,
WILLIS S. MOORE,
Assistant Attorney-General of Oregon,
Counsel for Appellees.

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vs.

MAX GEHLHAR, AS DIRECTOR OF AGRICULTURE FOR THE STATE OF OREGON, AND CHAS. A. COLE, AS CHIEF OF THE DIVISION OF PLANT INDUSTRY OF THE DEPARTMENT OF AGRICULTURE FOR THE STATE OF OREGON,

Appellees.

APPELLEES' STATEMENT OF MATTERS MAKING AGAINST THE JURISDICTION OF THE COURT ON APPEAL.

This appeal involves a question of whether or not certain statutes of the State of Oregon authorizing the adoption of standard containers for horticultural products, and an order of the Department of Agriculture of said state, promulgated pursuant to said statutes and fixing standards for pint containers of raspberries and strawberries, unlawfully deprive appellant of its property without due process of law, deny to it the equal protection of the laws, and impose unlawful burdens upon the interstate commerce and

business of appellant, contrary to and in violation of Section 1 of the 14th Amendment of the Constitution of the United States, and subdivision 3, section 8, Article I of the Constitution of the United States, by preventing appellant from obtaining orders from dealers in Oregon for containers manufactured by it in California (Par. XI of Amended Complaint), which do not conform to said Oregon standards.

In Appellant's Statement as to Jurisdiction on Appeal, pages 2-3, it is stated that the order fixing standards was made under the purported authority of section 18-2902 and section 18-2911, Oregon Code 1930, and sections 3 and 8, chapter 225, Oregon Laws 1933.

Appellees submit that chapter 225, Oregon Laws 1933, has no direct application for the reason that while it relates to the labeling, packing, possession for sale or transportation, and to the sale of fruits, vegetables and/or other horticultural products, and to their containers, it fixes no standards involved in the question presented by this appeal.

On May 3, 1933, the Director of Agriculture of the State of Oregon, who is the successor of the Oregon State Board of Horticulture (chapter 136, Oregon Laws 1931), acting pursuant to section 18-2902, Oregon Code 1930, promulgated an order fixing Oregon standards for pint containers of raspberries and strawberries. Said standards and the statute providing for same are set out at pages 3-5 of "Appellant's Statement as to Jurisdiction on Appeal", and copies of same are attached to appellant's amended complaint.

Section 18-2911, Oregon Code 1930, provides, among other things as follows:

> "• • • Whenever any standard for a container for any horticultural product becomes effective under this act, no person thereafter shall pack for sale, offer for sale, consign for sale, or sell and deliver, in a

container, any such horticultural product to which the standard is applicable, unless the container conforms to the standard, subject to such variations therefrom as may be allowed in the regulations made under this act, unless such product be brought from outside the state and offered for sale, consigned for sale or sold in the original package. Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars ($100), or be imprisoned not more than one year or both."

Appellees contend that this appeal does not present a case involving a substantial Federal question, for the reason that appellant, a foreign corporation, not licensed to do business in the State of Oregon, has no constitutional right to compel the State of Oregon to desist from prohibiting its citizens from using containers which do not conform to standards adopted by the State as a matter of public policy.

The Bank of Augusta v. *Earle*, 13 Pet. 519, 590, 594, 10 L. Ed. 274, 309, 310.

Pembina Consolidated Silver Mine Co., etc. v. *Pennsylvania*, 125 U. S. 181, 184, 185, 189, 31 L. Ed. 650, 652, 653.

Hooper v. *State of California*, 155 U. S. 648, 652, 39 L. Ed. 297, 299.

Waters-Pierce Oil Co. v. *Texas*, 177 U. S. 28, 43, 44 L. Ed. 657, 663.

Munday v. *Wisconsin Trust Co.*, 252 U. S. 499, 503, 64 L. Ed. 684, 689.

The use in the State of Oregon of pint strawberry and raspberry containers manufactured and sold by appellant is contrary to the declared public policy of that state.

Section 18-2902, Oregon Code 1930.

Section 18-2903, Oregon Code 1930.

The effect upon interstate commerce of the enforcement of the statutes and order complained of by appellant is too indirect to present a substantial Federal question.

Louisville & N. R. Co. v. *Kentucky*, 183 U. S. 503, 518, 519, 46 L. Ed. 298, 306.

Savage v. *Jones*, 225 U. S. 501, 520, 524, 539, 56 L. Ed. 1182, 1184, 1189, 1191, 1197.

Browning v. *Waycross*, 233 U. S. 16, 22, 58 L. Ed. 828, 832.

Hebe v. *Shaw*, 248 U. S. 297, 304, 63 L. Ed. 253, 259.

Hygrade Provision Co. v. *Sherman*, 266 U. S. 497, 503, 69 L. Ed. 402, 408.

Armour v. *North Dakota*, 240 U. S. 510, 517, 60 L. Ed. 771, 776.

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